

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

MARY E. THOMAS,	:	
	:	
Plaintiff,	:	Case No. 3:04CV389
	:	
vs.	:	District Judge Walter Herbert Rice
	:	Magistrate Judge Sharon L. Ovington
	:	
UNITED STATES POSTAL	:	
SERVICE, et al.,	:	
	:	
Defendants.	:	

REPORT AND RECOMMENDATIONS¹

On April 14, 2005, the Court Ordered Plaintiff to file a First Amended Complaint on or before April 29, 2005. (Doc. #3). Plaintiff did not file a First Amended Complaint or otherwise respond to the Court's Order. Consequently, on May 9, 2005, the Court Ordered Plaintiff to Show Cause on or before June 10, 2005 why this case should not be dismissed due to her failure to respond to an Order of the Court or for her failure to prosecute. (Doc. #4). Plaintiff has not responded to the Court's Order to Show Cause and has not filed any Motion, Memorandum, or other document in this case since filing her Complaint on November 2, 2004.

Plaintiff's failure to respond to the Order to Show Cause leaves the record void of an explanation for her failure to file a First Amended Complaint or for her failure to prosecute. Although this Court prefers to adjudicate cases on their merits, Plaintiff has engaged in a clear pattern of delay by failing to respond to the Court's Order to Show Cause and by not prosecuting this case in any

¹ Attached hereto is a NOTICE to the parties regarding objections to this Report and Recommendations.

manner since filing his Complaint more than seven months ago. Plaintiff's clear pattern of delay warrants dismissal of this case without prejudice pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute. *See Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962); *see also Jourdan v. Jabe*, 951 F.2d 108, 110 (6th Cir. 1991); *Harris v. Callwood*, 844 F.2d 1254, 1256 (6th Cir. 1988).

IT IS THEREFORE RECOMMENDED THAT:

Plaintiff's Complaint be dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b).

June 21, 2005

s/ Sharon L. Ovington
Sharon L. Ovington
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within ten days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(e), this period is extended to thirteen days (excluding intervening Saturdays, Sundays, and legal holidays) because this Report is being served by mail. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within ten days after being served with a copy thereof.

Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F. 2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).